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## 001 List of Exhibits

Exhibit I - Request for an Administrative Hearing form (DCH-0092)

Exhibit II - Hearing Summary form (DCH-0367)

Exhibit III - Order Certification form (DCH-0107)

Exhibit IV - Hearing Request Withdrawal form (DCH-0093)

Exhibit V B Administrative Tribunal Forms Requisition form (DCH-0646)

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## 100 Introduction

The Department of Community Health (DCH) Administrative Tribunal hears a wide variety of appeals of administrative decisions from DCH and DCH Contracted Agencies. The Administrative Law Judges of the Tribunal are delegated, by DCH's Director, to hold hearings in accordance with the Administrative Procedures Act, the Social Welfare Act, the Public Health Code, Mental Health Code, the Administrative Code and/or various federal regulations.

The policy contained in this transmittal is intended to improve access to information about the hearings process and provide as much uniformity of practice and procedures as current law and regulations permit. It is to be used in conjunction with the relevant law and regulations, not in place of it.

## 110 Legal Authority

MCL 330.114; MCL 333.2233; MCL 333.5466; MCL 333.5475; MCL 400.37; MCL 400.9; Executive Order No. 1996-1; Executive Order No. 1996-4; 42 CFR 431.200 *et seq.*; 7 CFR 246.18; 7 CFR 246.9; MAC R 325.910, *et. seq.*; MAC R 330.4011, MAC R 330.5011; MAC R 330.8005, *et. seq.*; MAC R 400.3401 *et.seq.*; MAC R 400.901 *et.seq.*; and relevant Interagency Agreements

## 150 Definitions

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**Administrative Hearing** - Also called a fair hearing; an impartial review of a decision made by the Department of Community Health (DCH) or one of its contract agencies that the Appellant believes is inappropriate. An Administrative Law Judge presides over the impartial review.

**Action** - A termination, suspension or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Social Security Act.

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**Administrative Law Judge (ALJ)** - A person designated by the Department of Community Health to conduct hearings in an impartial or unbiased manner.

**Adverse Action B** Includes but is not limited to:

Women, Infants, and Children Program: A denial of application for participation in the program; or during the course of the agreement, the agency or vendor is disqualified.

Medicaid Provider:

- (i) A suspension or termination of provider participation in the medical assistance program.
- (ii) A denial of an applicant's request for participation in the medical assistance program.
- (iii) A denial, revocation, or suspension of a license or certification issued by the department to allow a facility to operate.
- (iv) The reduction, suspension, or adjustment of provider payments.
- (v) Retroactive adjustments following the audit or review and determination of the daily reimbursement rates for institutional providers.

**Adverse Determination** - A determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7) of the Social Security Act that the individual does not require the level of services provided by the nursing facility or that the individual does or does not require specialized services.

**Appellant** - A beneficiary, resident, patient, consumer or responsible party requesting a hearing.

**Authorized Hearing Representative (AHR)** - A person, legally designated, to stand in for or represent the Appellant in the hearing process. This right comes from one of the following sources:

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- \_ Written authorization signed by the appellant, giving a person the authority to act for the appellant in the hearing process,
- \_ Court appointed guardian or conservator,
- \_ Legal parent of a minor child,
- \_ The appellant's spouse, or the deceased appellant's widow or widower, **ONLY** when no one else has the authority to represent the appellant.

An AHR has no right to a hearing, but rather exercises the appellant's right. Someone who ~~assists~~ assists, but does not stand in for or represent the appellant in the hearing process, does not need to meet the above criteria.

**Contested Case** - A proceeding under the Michigan Administrative Procedures Act in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing.

**DCH Contracted Agency** - Any agency, organization or health plan contracted by the Department that either determines eligibility for a department program, or delivers a service provided under a department program to a beneficiary, patient, or resident. **References to DCH may include any contracted agency.**

**Final Determination Notice** **B** A notice of an adverse action which includes the action to be taken; the date of the proposed action; the reason for the action; the statute, rule, or guideline under which the action is taken; and the right to a hearing.

**Hearings Coordinator** - A DCH or DCH Contracted Agency staff person assigned to serve as the liaison between the agency or DCH organization and the Administrative Tribunal. Each substantive area or component involved in hearings with the Tribunal is required to designate a

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Hearings Coordinator. The purpose of the Hearings Coordinator is to serve as a single contact point for the Administrative Tribunal to communicate regarding procedural aspects of any case. For example, hearing requests received by the Tribunal will be faxed to the Coordinator, if there is a change in date or location, the Hearings Coordinator will be contacted, and the Hearings Coordinator will be sent all notices and orders issued by the Tribunal.

**Notice** - A written statement advising individuals of the action that is being taken by the State. (See section 160 below)



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## 160 Notice Requirements

**Medicaid Beneficiary [including Pre-Admission Screening and Annual Resident Review (PASARR; also known as PASARR); Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program]**

The application forms and each written notice of action must inform clients of their right to a hearing. These include an explanation of how and where to file a hearing request and the right to be assisted by and represented by anyone the client chooses.

The client must be sent a written notice of actions affecting eligibility or amounts of Medicaid benefits or Medicaid covered services. A complete notice must include:

- Action being taken by the DCH or any contracted agency;
- The reasons for the action;
- The legal basis on which the action is being taken;
- The individual's right to a hearing; and
- An explanation of the circumstances under which benefits or services are continued if a hearing is requested.

**Exception:** Do not provide a notice when you are implementing a hearing decision or a policy hearing authority decision. The hearing decision serves as notice of the action.

There are two types of written notices--**adequate and advance**.

### **I. Adequate Notice**

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An adequate notice is a written notice sent to the client at the same time that an action takes effect (i.e. not pending). Adequate notice is given in the following circumstances:

- Denial of a service
- Approval or denial of an application;
- Increase in benefits;
- An individual plan of service developed through a person-centered process.
- Any plan of service including those developed by a qualified health plan (QHP).

## **II. Advance Notice**

Advance notice is required when an action is being taken to reduce, suspend or terminate a benefit or service the client is currently receiving. The notice must be mailed at least twelve (12) days before the intended negative action takes effect. The action is pending to provide the client a chance to react to the proposed action. If the client requests a hearing before the date of action, the agency may not terminate or reduce benefits or services until a decision and order is issued by the administrative law judge or the client withdraws his hearing request or the client does not appear at a scheduled hearing.

### **Pre-Admissions Screening and Annual Resident Review (PASARR, also known as OBRA)**

Notices of actions or adverse determinations for PASARR recipients must comply with the notice requirements stated above as well as the following:

1. Is a nursing facility level of services needed;
2. Are specialized services needed;
3. The placement options that are available to the individual consistent with these determinations; and
4. The rights of the individual to appeal the determination

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**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program)**

A DCH-0092, Hearing Request Form (Exhibit I) or its equivalent shall be sent to the appellant with all adequate or advance notices. A return postage paid envelope shall be included.

Hearing Request forms, Hearing Withdrawal forms, and return postage paid envelopes addressed to the Administrative Tribunal, may be ordered by completing Administrative Tribunal Forms Requisition (form DCH-0646) (see Exhibit V) and mailing to:

Forms Distribution  
MDCH Administrative Services  
3423 N ML King, Suite 124  
Lansing, MI 48909-7979

**Women, Infants, and Children (WIC) Vendor**

Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action.

**Women, Infants, and Children (WIC) Participant**

At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the Program, the local agency shall inform each individual in writing of the right to a local level hearing, of the method by which a local level hearing may be requested, and that any positions or arguments on behalf of the individual may be presented

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personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

A local level hearing will be held. The local level hearing decision must include a notice of the Appellant's right to request a hearing with the Administrative Tribunal, the time limit for requesting a hearing with the Administrative Tribunal and the address and phone number of the Administrative Tribunal.

## **200 Hearing Requests and Deadlines for Hearing Requests**

### **All Programs**

All requests for a hearing must be in writing. The hearing request should provide the name, address and telephone number of the person for whom the hearing is being requested. The name, address, and telephone number of the person requesting the hearing, if different, should be included. The benefit or program involved should be clearly identified. The hearing request should identify what decision is being challenged.

### **Lead Abatement**

The request for a hearing must be made in writing, no later than 15 working days after receipt of a citation or notice of revocation or suspension of accreditation or certification.

**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Transfers; Mental Health Financial**

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The request must be signed by appellant affected by the determination or his/her Authorized Hearing Representative (AHR).

**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program)**

The beneficiary or authorized hearing representative has 90 calendar days from the date of the written notice of negative action to request a hearing. The written hearing request must be received by the Department within that 90-day period.

**Mental Health Transfer**

An appeal of a non-emergency transfer may be made at any time before the transfer.  
An appeal of an emergency transfer may be made up to seven days after the transfer.

**Mental Health Financial**

The individual or Authorized Hearing Representative may appeal a determination of financial liability made by the department within 30 days of the date the determination was given or mailed to the individual, spouse, or parent.

**Medicaid Provider**

**This section applies only to Medicaid enrolled providers serving fee for service Medicaid Beneficiaries**

Any provider participating, or applicant wishing to participate in the Medicaid Program may appeal

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any adverse action taken by the Medical Services Administration as a provider.

The method of appeal depends upon the provider type. Providers are informed of the steps to be taken to appeal the action via the notice of adverse action. (Hospital providers may appeal at the time of adverse action, prior to the notice.) Institutional providers should refer to their respective reimbursement manual for the appropriate steps and time frames for appeal.

### **Mental Health Financial**

The individual or Authorized Hearing Representative may appeal a determination of financial liability made by the department within 30 days of the date the determination was given or mailed to the individual, spouse, or parent.

### **Certificate of Need (CON)**

An applicant for a certificate may request a hearing as authorized by statute or rule. The hearing request must be made in writing and must include a statement of the grounds for a hearing and a clear and concise statement of the facts and law relied on and the relief sought.

The applicant may, within 15 days after receipt by the applicant of the Health Facilities Section's proposed decision or receipt of notice of reversal by the director of a proposed decision that is an approval, submit a written request for a hearing to demonstrate to the department that the application filed by the applicant meets the requirements for approval.

A request for a hearing shall be filed within 15 days of the applicant's receipt of the Department's proposed decision or receipt of notice of reversal by the director of a proposed decision that is an approval.

### **Women, Infants, and Children (WIC) Vendor**

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A vendor or applicant may request a hearing in writing. The request must include a statement of the facts asserted and the relief sought.

Upon issuance of a 15-day Termination Order, the Department shall provide the vendor with an opportunity for a hearing within five business days after the service of the order. A Business day@ means a day of the year, exclusive of a Saturday, Sunday or State holiday.

The hearing date, time and location shall be specified in the 15-day Termination Order.

A request for hearing must be received by the Department within 21 calendar days of the date of mailing of the notice of adverse action by the Department. A vendor who fails to request a hearing within the time and in the manner specified, waives the right to an administrative hearing and any other review to which he/she might be entitled, and such waiver shall constitute acceptance of the action.

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### **Women, Infants, and Children (WIC) Participant**

A request for a hearing is defined as a clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The Department or local agency shall not limit or interfere with the individual's freedom to request a hearing.

The Appellant may appeal a local-level hearing decision to the Tribunal, provided that the request for appeal is made within 15 days of the mailing date of the local-level hearing decision notice.

## **210 Filing the Request for Hearing**

### **All Programs**

All hearing requests should be mailed to:

Administrative Tribunal  
Michigan Department of Community Health  
P.O. Box 30195  
Lansing, MI 48909

If a hearing request is received in another location, a copy of the request should immediately be faxed to the Tribunal at (517) 335-9180. The original request should be forwarded to the Tribunal within seven days.



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## **230 Local Grievance/Complaint Process**

### **Medicaid Beneficiary (including PASARR; Children=s Waiver; Habilitation Supports Waiver; Community Mental Health Service Program)**

Beneficiaries must be told of their right to an administrative hearing. While Qualified Health Plans, Community Mental Health Services Program and other agencies may attempt to resolve the dispute through a local grievance or complaint process, this process must not supplant or replace the beneficiary=s right to file a hearing request with DCH. Both processes may occur simultaneously.

## **235 Local Level Hearings**

### **Women, Infants, and Children (WIC) Participant**

The Department provides a hearing procedure through which any individual may appeal a Department or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual=s denial of participation or disqualification from the program.

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The Department provides a hearing at the local level and permits an individual to appeal a local agency decision to the Administrative Tribunal.

### **300 Processing Hearing Requests**

**Medicaid Beneficiary (including PASARR; Children=s Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; WIC Participant**

Upon receipt of a hearing request, the Tribunal will assign a docket number and fax a copy of the hearing request to the appropriate organizational unit of the Department or contract agent identified in the hearing request. A hearings coordinator will be designated by each organizational unit or contract agent. The hearings coordinator is responsible for receiving the hearing requests, identifying the responsible staff and forwarding a completed hearing summary to the Tribunal and the Appellant, within 14 days of receipt of the hearing request.

#### **Lead Abatement**

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Upon receipt of a hearing request, the Tribunal will assign a docket number and fax a copy of the hearing request to the Lead Hazard Remediation Program. The Program shall file with the Tribunal a copy of its notice and/or citation and supporting documentation within 14 days.

### **Medicaid Provider**

Upon receipt of a hearing request, the Tribunal will assign a docket number and fax a copy of the hearing request to the Medical Services Administration, Appeals Section. The Appeals Section shall file with the Administrative Tribunal, within 30 days after receipt by the department of the hearing request, a copy of the final determination notice and supporting documentation.

### **Mental Health Transfer**

Upon receipt of a hearing request, the Tribunal will assign a docket number and fax a copy of the hearing request to the facility transfer coordinator. The transfer coordinator is responsible for faxing the transfer order and written Community Mental Health approval to the Tribunal no later than the day before the hearing.

### **Certificate of Need**

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Upon receipt of a hearing request, the Tribunal will assign a docket number and fax a copy of the hearing request to Health Legislation and Policy Development; Program, Policy, Community Assessment and Health Facilities Division; Health Facilities Section. The Section shall file with the Tribunal a copy of its notice to the Applicant and supporting documentation within 14 days.

### **Women, Infants, and Children (WIC) Vendor**

Upon receipt of a hearing request, the Tribunal will assign a docket number and fax a copy of the hearing request to the Women, Infants, and Children Division; Vendor Management & Operations Section. The Section shall file with the Tribunal a copy of its notice to the Vendor and supporting documentation within 14 days.

## **310 New Applications or Requests for Services**

### **Medicaid Beneficiary (including PASARR; Children=s Waiver; Habilitation Supports Waiver; Community Mental Health Service Program)**

A new application or request for services should not be delayed while a hearing is pending on a previous determination. Process the application or request and notify the beneficiary

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of your determination, following all Department policies and procedures. Advise the Tribunal if the new determination makes the previously requested hearing unnecessary.

## **320 Hearing Summary**

**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; Mental Health Transfers; WIC Participant**

The Hearing Summary form (Exhibit II), or its equivalent, is prepared by the DCH/DCH Contracted Agency staff responsible for presenting the case at hearing. All case identifiers and notations on status must be complete.

The narrative must include all of the following:

- \_ Clear statement of the action and/or decision being appealed, including all programs involved in the action.
- \_ Facts which led to the action, or decision.
- \_ Policy which supported the action, or decision.

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- \_ Correct address of the Appellant or AHR
- \_ Description of the documents the DCH or the DCH Contracted Agency intends to offer as exhibits at the hearing.

Appellants and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. Send a copy of the hearing summary and all documents and records to be used by DCH or the DCH Contracted Agency at the hearing to the Appellant and AHR at least seven days before the scheduled hearing.

Hearing Summary forms (DCH-0367) may be ordered by completing Administrative Tribunal Forms Requisition (form DCH-0646) (see Exhibit V) and mailing to:

Forms Distribution  
MDCH Administrative Services  
3423 N ML King, Suite 124  
Lansing, MI 48909-7979

## **400 Notice of Hearing**

### **All Programs**

Notice of the time, date, and place of hearing shall be mailed to the parties, or their authorized hearing representative, not less than 10 calendar days before the date of the hearing.

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## **420 Place of the Hearing**

### **Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; WIC Participant**

Hearings are routinely scheduled for telephone conference calls. The Administrative Law Judge conducts the hearing from his office. The Appellant/AHR is directed to a local FIA office, the local community mental health facility or other location as indicated on the notice.

The Appellant/AHR may request permission of the Tribunal to appear by phone from another location. The request must be made to the Tribunal at least one full business day before the hearing.

The Appellant/AHR may request that the hearing be conducted in person if the Appellant/AHR requests the ALJ to appear in person at the hearing. The ALJ will travel to the local office or facility.

### **Lead Abatement; Medicaid Provider; Certificate of Need (CON); Women, Infants, and Children (WIC) Vendor**

Hearings are conducted in the hearing rooms of the Department in Lansing. Occasionally, the Tribunal will conduct hearings in other locations at the discretion of the Tribunal.

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## **Mental Health Transfer**

All hearings are conducted in person at the appropriate facility.

### **430 Appearances**

#### **All Programs**

A person may appear on that person's own behalf or through an Authorized Hearing Representative.

DCH or the DCH Contracted Agency may appear through designated staff or the Attorney General's office.

### **450 Adjournments**

**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program; Lead Abatement; Medicaid Provider; Certificate of Need); Mental Health Financial; Mental Health Transfer; WIC Participant**



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The appellant or his/her authorized hearing representative may request an adjournment (also called a postponement) of a scheduled hearing. Only the Administrative Tribunal can grant or deny a request for an adjournment.

### **Women, Infants, and Children (WIC) Vendor**

One opportunity shall be provided to both the Department and the vendor to reschedule the hearing date upon specific request in writing addressed to the Administrative Law Judge. Any further requests for adjournment of the hearing must be by motion addressed to the Administrative Law Judge and shall be granted only upon a showing of good cause. The Administrative Law Judge shall not rule on the request for adjournment until all other parties have had an opportunity to be heard on the request. However, if all parties agree to an adjournment, then the Administrative Law Judge may be so advised by telephone and may rule on the request immediately.

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## 500 Pre-hearing Conferences

### All Programs

Pre-hearing conferences with the Administrative Law Judge are scheduled at the discretion of the Administrative Law Judge at the request of the parties or on the ALJ's own motion.

**Lead Abatement; Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; Mental Health Transfer; WIC Vendor; WIC Participant**

The ALJ's will **not** routinely conduct pre-hearing conferences.

The Department/Contract Agency may offer a pre-hearing conference.

### Medicaid Provider

A pre-hearing conference with the ALJ is routinely scheduled for all provider hearings, **except** appeals of emergency suspensions and/or terminations of a provider's participation in the Medicaid program.

### Certificate of Need

The Certificate of Need rules provide that the first day of the scheduled hearing shall be used for pre-hearings.

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## 520 Motions

### All Programs

A party preparing to file motions is required to contact other parties involved in the case to attempt to resolve the matter prior to making a motion. Stipulations should be filed with the Tribunal whenever possible.

As far as practicable, Michigan Court Rule (MCR) 2.119 applies to motion practice before the Tribunal. No filing fees are required.

The Tribunal does not set aside a particular date or time to hear motions. The Tribunal's scheduling clerk must be contacted prior to filing and serving the motion to obtain a hearing date, if one is required. The party making the motion must file and serve appropriate notice of the hearing on the motion.

**Exception:** The Certificate of Need rules require that all pre-hearing motions be heard on the first day of the scheduled hearing.

## 540 Subpoenas

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A subpoena may be requested when the Appellant/AHR or Department/DCH Contracted Agency requires:

- A person outside the Department to come to a hearing to testify; or
- A document from outside the Department to be offered as evidence in a hearing, only if not available voluntarily.

Request a subpoena by sending a memo to the Tribunal. Allow adequate time to mail or hand-deliver the subpoena. The memo must include all the following:

- The case name
- The docket number
- The date and time the hearing is scheduled
- The name and address of the person whose testimony is required
- What document is to be subpoenaed
- Why the person's presence and/or the document is needed at the hearing
- How the person's testimony or the document relates to the hearing issue

The requestor is responsible for serving the subpoena.

The Administrative Procedures Act explains when subpoenas may be issued and how subpoenas are enforced.

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**Department staff are expected to participate in hearings without a subpoena when their testimony is required.**

If the Appellant or DCH/DCH Contracted Agency staff responsible for presenting the hearing cannot arrange for the participation of a Department staff member, send a memo to the Tribunal giving:

- \_ The name and location of the employee;
- \_ Why the employee's participation is needed, and
- \_ How the employee's testimony related to the hearing issue.

The Tribunal will decide whether to require the employees participation.

## **550 The Hearing**

### **All Programs**

The Administrative Procedures Act of 1969, as amended, applies to cases heard before the Administrative Tribunal.

**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program) Mental Health Financial; Mental Health Transfer; WIC Participant**

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The DCH/DCH Contracted Agency and Appellant will each present their positions to the ALJ, who will determine whether the actions taken are correct according to fact, law, policy and procedure.

Following opening statement(s), if any, the ALJ will direct the DCH/DCH Contracted Agency case presenter to explain the position of DCH/DCH Contracted Agency. The hearing summary, or highlights of it, may be read into the record at this time. You may use the hearing summary as a guide in presenting the evidence, including the following in planning the case presentation:

- \_ An explanation of the action(s) taken including all programs involved.
- \_ The facts which led to the action.
- \_ A summary of the policy or laws relied upon to take the action.
- \_ Any clarifications by DCH/DCH Contracted Agency staff of the policy or laws relied upon in taking the action.

Both the DCH/DCH Contracted Agency and the Appellant or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross examine adverse witnesses, and cross-examine the author of a document offered in evidence.

The ALJ must ensure that the record is complete, and may do the following:

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- \_ Take an active role in questioning of witnesses and parties
- \_ Assist either side to be sure all the necessary information is presented on the record
- \_ Refuse to accept evidence that the ALJ believes is
  - \_ Unduly repetitious, or
  - \_ Immaterial, or
  - \_ Irrelevant, or
  - \_ Incompetent.

Either party may:

- \_ State on the record its disagreement with the ALJ's decision to exclude evidence and the reason for the disagreement; and
- \_ Object to evidence the party believes should not be part of the hearing record.

When refusing to admit evidence, the ALJ must state on the record the nature of the evidence and why it was not admitted. The ALJ may allow written documents to be admitted in place of oral testimony if the ALJ decides this is fair to both sides in the case being heard.

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## 600 Denial of Request for Hearing

### All Programs

Only the Administrative Tribunal may deny a request for a hearing. Forward all hearing requests to the Administrative Tribunal (refer to Section 210 of this policy).

### **Medicaid Beneficiary (including PASARR; Children=s Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; Mental Health Transfer; WIC Participant**

If you believe a request is inappropriate or if the request was filed beyond the required deadline, do the following:

- \_ Complete a Hearing Summary stating:
  - \_ Why you believe the request should not be heard; or
  - \_ The request was received after the required deadline for filing a hearing request (attach a copy of the notice); and
- \_ Forward the hearing request and the summary to the Tribunal.

The Tribunal will inform the appellant, the AHR and the hearings coordinator if the request is denied.



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The Tribunal will not grant a hearing regarding the issue of a mass update required by state or federal law unless the reason for the request is an issue of incorrect computation of program benefits or patient-pay amount. The Department may issue separate instructions regarding deletion of pending negative actions and forwarding of any hearing request(s) to the Tribunal for disposition.

If the DCH/DCH Contracted Agency determines that the case action needs correction, do the following:

- \_ Cancel the action.
- \_ Take corrective action retroactive to the date the incorrect action was effective.
- \_ Send a new determination notice to the Appellant and AHR.
- \_ Notify the Tribunal that the disputed action has been corrected and that the appellant's concerns have been resolved. The Tribunal must have the following documentation to deny a hearing request without a signed client withdrawal by the appellant:
  - \_ The hearing request with the original signature of the Appellant or AHR
  - \_ A short summary of the actions the DCH/DCH Contracted Agency took to correct all of the Appellant's concerns.

The Tribunal will deny hearing requests signed by unauthorized persons and requests without original signatures.

**Lead Abatement; Medicaid Provider, Certificate of Need, WIC Vendor**

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If you believe a request is inappropriate or if the request was filed beyond the required deadline, do the following:

- \_ Prepare a memorandum stating:
  - \_ why you believe the request should not be heard; or
  - \_ the request was received after the required deadline for filing a hearing request (attach a copy of the notice); and
- \_ Forward the hearing request and memorandum to the Tribunal.

The Tribunal will inform the Appellant and Department if the request is denied.

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## 620 Withdrawal

### **Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; Mental Health Transfers; WIC Participant**

An Appellant or AHR may agree to withdraw the hearing request at anytime during the hearing process. Instruct the Appellant or AHR to fill out the Hearing Request Withdrawal form (DCH-0093) or its equivalent, and return it immediately in the postage paid envelope to the Tribunal. (See Exhibit IV.) Hearing withdrawal forms may be ordered by completing Administrative Tribunal Forms Requisition (form DCH-0646) (see Exhibit V) and mailing to:

Forms Distribution  
MDCH Administrative Services  
3423 N ML King, Suite 124  
Lansing, MI 48909-7979

When any issue is still in dispute, do not:

- \_ suggest that the Appellant or AHR withdraw the request; or
- \_ mail a withdrawal form to the Appellant or AHR unless requested.

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Do not ask for a withdrawal that is based on an action you plan to take in the future.

### **Prior to mailing the request to the Tribunal**

When all issues are resolved and the Appellant or AHR wishes to withdraw the request, ask for a signed, written withdrawal. The withdrawal must clearly state why the Appellant or AHR has decided to withdraw the request. Enter all identifying case information on the withdrawal, attach the original copy to the request and forward them to the Tribunal. File a copy of the withdrawal in the case record.

### **After Mailing the Request to the Tribunal**

When all issues are resolved and the Appellant or AHR wishes to withdraw the request, do the following:

- Appellant or AHR in a DCH/DCH Contracted Agency Office. Ask for a signed, written withdrawal. Fax a copy to the Tribunal and file the original in the case record. The withdrawal must include all of the following:
  - Program(s) in dispute
  - Case number
  - Tribunal register number, if known
  - Correct address of the Appellant or AHR
- Appellant or AHR on the Telephone. Ask the caller to promptly send a signed, written withdrawal to the Tribunal.
  - On the DCH withdrawal form enter required identifying information and mail the form to the Appellant.

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**Note:** The Appellant/AHR may use some other written means to withdraw a hearing request but the Tribunal needs all the identifying information listed on the DCH form, a clear statement by the Appellant/AHR explaining his/her reason for withdrawing his/her hearing request and the signature of the Appellant or AHR.

— Telephone or Fax the Tribunal to inform them that the request may be withdrawn.

**Note:** The DCH/DCH Contracted Agency should be available to present the case until notified by the Tribunal that the request has been dismissed.

### **Lead Abatement**

At any time before a final decision is issued, an appellant may withdraw its application or request for a hearing. The withdrawal must be in writing or on the record

### **Medicaid Provider; Certificate of Need; WIC Vendor**

At any time before a final decision is issued by the Director of the Department of Community Health, a party may withdraw its application or request for a hearing. The withdrawal must be in writing or on the record.

## **640 Dismissal**

**Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; Mental Health Transfers; WIC Participant**

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The Tribunal may deny or dismiss a request for a hearing if the Appellant/AHR fails to appear at a scheduled hearing without good cause.

### **Lead Abatement; Medicaid Provider; Certificate of Need; WIC Vendor**

An Appellant who fails to appear at the scheduled hearing, or fails to comply with Prehearing orders, waives the right to an administrative hearing and any other review to which he or she might be entitled, and such waiver shall constitute acceptance of the action the Department took or proposes. The hearing request will be dismissed.

## **650 ALJ Decisions**

### **ALL Programs**

- \_ Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.
- \_ The record must consist only of:
  1. The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;
  2. All papers and requests filed in the proceeding; and
  3. The recommendation or decision of the Administrative Law Judge.
- \_ The Appellant must have access to the record at a convenient place and time.

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— In any hearing, the decision must be a written one that:

1. Summarizes the facts; and
2. Identifies the regulation, policy, statute, contract, case law supporting the decision; and
3. Specify the reasons for the decision; and
4. Identify the supporting evidence.

## **670 Recommended Decisions**

### **Medicaid Provider**

The Administrative Law Judge will mail the proposal for decision to the parties, and each party shall have ten calendar days from the date of mailing of the proposed decision to file exceptions to the Department.

### **Certificate of Need**

After the conclusion of a hearing, the ALJ, if other than the director of the Department of Community Health, shall deliver, to the director of the Department of Community Health, the official case file and the ALJ's proposal for decision. The ALJ shall serve the proposal for decision upon the parties by first-class or certified mail or by personal

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service. Each party shall have 20 days from the date of service of the proposal for decision to file exceptions or present written arguments to the Department of Community Health director.

Exceptions and written arguments shall be served on all parties, who shall have 10 days to file their replies to the exceptions with the director of the Department of Community Health and serve the replies on the parties.

### **Women, Infants, and Children (WIC) Vendor**

Following the conclusion of a hearing, the ALJ shall deliver to the Department the official case file and his or her proposal for decision. The Department shall serve the proposal for decision upon the parties by certified mail or personal service, and each party shall have 10 calendar days from the date of service of the proposal for decision to file exceptions or present written arguments to the Department. Such exceptions and written arguments shall be served on all parties, who shall have 10 calendar days to file their replies to the exceptions with the Department and serve such replies on the parties.

Following review of the record or the proposal for decision and exceptions thereto, and replies, if any, the Director shall issue an order stating the findings of fact, conclusions of law, and determination of the appeal. The Department shall serve copies of the order on all parties.



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## **680 Final Decision and Order**

**Lead Abatement; Medicaid Beneficiary (including PASARR; Children=s Waiver; Habilitation Supports Waiver; Community Mental Health Service Program); Mental Health Financial; Mental Heath Transfers; WIC Participant**

The ALJ=s Decision and Order is the final determination of the Department. Rehearings or reconsiderations may be granted in some circumstances. (See Section 800 of this policy.)

## **700 Certification of Compliance with the Judge=s Order**

**Medicaid Beneficiary (including PASARR; Children=s Waiver; Habilitation Supports Waiver; Community Mental Health Service Program)**

The Tribunal will send the Decision and Order to the Appellant/AHR and Hearings Coordinator. If the Decision and Order require implementation by a DCH or a DCH Contracted Agency, a DCH-0107, Order Certification form, (Exhibit III), will be sent by the Administrative Tribunal with the Decision and Order to the Hearings

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Coordinator. Since the DCH-0107 confirms the status of the Decision and Order's implementation; i.e., when the Decision and Order has or will be acted upon, it must be quickly completed and returned to the Administrative Tribunal. It is the Hearing Coordinator's responsibility to ensure that the decision is implemented within 10 calendar days of the Decision and Order mailing date.

Do not provide a notice of case action. The decision and order serve as notice of the action.

Complete the yellow copy of the DCH-0107 (Exhibit III) within ten (10) calendar days of the mailing date on the hearing decision. Send it to the Administrative Tribunal to certify the status of implementation. Do this even when the implementation is not yet complete.

If implementation of the decision was incomplete when the yellow copy was sent to the Administrative Tribunal, fill out and mail the pink copy of the DCH-0107 when you complete implementation. This certifies the completion of implementation.

## **800 Rehearing/Reconsideration**

**Lead Abatement; Medicaid Beneficiary (including PASARR; Children's Waiver; Habilitation Supports Waiver; Community**

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## **Mental Health Service Program); Mental Health Financial; Mental Heath Transfers; WIC Participant**

DCH, a DCH Contracted Agency, or the Appellant/AHR may file a written request for a rehearing/reconsideration. The Tribunal will grant a rehearing/reconsideration request if it meets specific criteria (see below), and there is time to rehear/reconsider the case and implement the resulting decision within the 90-day time frame. If it is not likely or possible to meet the 90-day time frame, the Tribunal will ask the Appellant to waive the timeliness requirement in writing to allow the Appellant a rehearing/reconsideration.

An Appellant's request for a rehearing/reconsideration must be sent directly to the Tribunal.

The Tribunal will grant a rehearing/reconsideration when it is believed that one of the following has occurred:

- \_ Newly discovered evidence or evidence that should have been discovered that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision; or
- \_ Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion; or
- \_ A typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the Appellant; or
- \_ Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

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DCH/DCH Contracted Agency staff must request a rehearing/reconsideration when it is believed that one of the above situations has occurred. Specify all reasons for the rehearing/reconsideration and send to the Hearing Coordinator, who will forward the request to the Tribunal.

A DCH/DCH Contracted Agency staff request for a rehearing or reconsideration must be received by the Tribunal within 30 days from the date of the Hearing Decision and Order as long as the 90 day time frame has not been exceeded.

The Administrative Tribunal will either grant or deny a rehearing/reconsideration and send a written notice of the decision.

A rehearing is a full hearing which is granted when:

- C The original hearing record is inadequate for purposes of judicial review; or
- C There is newly discovered evidence that could affect the outcome of the original hearing decision.

A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties believes the ALJ failed to accurately address all the issues.